

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA**

**UNITED STATES OF AMERICA,**

**Plaintiff,**

**vs.**

**JESUS MANUEL GUTIERREZ,**

**Defendant.**

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**CASE NO. 8:04CR206**

**ORDER**

This matter is before the Court on the Defendant's notice of appeal (Filing No. 381) and the Clerk's memorandum requesting a ruling with respect to excusable neglect for the untimely filing of the notice (Filing No. 382).

The Defendant's plea agreement includes a waiver of his right to appeal. (Filing No. 299.) The change-of-plea colloquy shows that the waiver was knowing and voluntary. (Filing No. 336, TR, at 9, 27-28.) Therefore, the notice of appeal shall be stricken and the matter of excusable neglect is moot.

**IT IS ORDERED:**

1. The Clerk is directed to strike Defendant's notice of appeal (Filing No. 381);  
and
2. Any request to allow the untimely filing of the notice of appeal based on excusable neglect is denied as moot.

DATED this 13<sup>th</sup> day of December, 2005.

**BY THE COURT:**

s/Laurie Smith Camp  
United States District Judge